REMARKS

Claims 26, 39, 41 and 45 have been amended. No new matter has been added. Support for the amendments may be found at, for example, page 3, paragraph 3 of the specification. Claims 26, 28-35, 37-39, and 41-48 are pending.

CLAIM REJECTIONS

Rejection of claims under 35 U.S.C. § 112, first paragraph

The Examiner has rejected claims 39 and 41-48 under 35 U.S.C. § 112, first paragraph, "as failing to comply with the written description requirement." See page 3 of the Office Action. Claims 39, 41 and 45 are independent claims.

Specifically, the Examiner alleges that "[t]he limitation directed to the viscosity of at least about 1.9 Pa.s recited in the claims have [no] support in the originally filed specification and claims." See page 3 of the Office Action. The Examiner further states that "[t]he originally filed specification only discloses the viscosity being about 1.9Pa.s. and 2.54Pa.s." See page 3 of the Office Action. Applicant respectfully traverses this rejection.

Applicant submits that there is support in the specification for the viscosity of at least about 1.9 Pa.s. Specifically, the specification states that "[f]or the production of a satisfactory thickening effect, that is to say for the production of a viscosity which is **at least** equal to 50 deviation units on a RHEOMAT 180 viscometer, rotor 3(25C, reading after 30 seconds), **that is about 1.9 Pa.s**, this first thickening constituent (b) should be combined with a second constituent (c) playing the role of cothickening agent." (emphasis added). See paragraph 1 at page 6 of the specification. It follows that a skilled person reading the specification as a whole, would have understood that the specification adequately describes the limitation directed to the viscosity of at least about 1.9 Pa.s as recited in claims 39 and 41-48.

Accordingly, the specification sufficiently describes the claimed invention in full, clear, concise and exact terms. Applicants respectfully request reconsideration and withdrawal of this rejection.

Rejection of claims under 35 U.S.C. § 103

Midha in view of Gebhard

The Examiner has rejected claims 26, 28-35 and 37-39 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,986,015 to Midha et al. ("Midha") in view of U.S. Patent No. 5,612,397 to Gebhard et al. ("Gebhard"). See pages 4-7 of the Office Action. Claims 28-35 and 37-38 depend from independent claim 26. Claim 39 is an independent claim.

Applicant has discovered a cosmetic composition that includes a cosmetically acceptable carrier containing: (a) at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of, as principal monomers, (1) at least one monomer selected from the group consisting of C_{1-20} alkyl acrylate, N-mono-(C_{2-12}) alkylacrylamide, N-mono-(C_{2-12}) alkylmethacrylamide, N, N-di-(C_{2-12}) alkylacrylamide and N, N-di-(C_{2-12}) alkylmethacrylamide, and (2) at least one monomer selected from the group consisting of acrylic acid, methacrylic acid, and acrylic and methacrylic acids, the polymer having a structure comprising hydrophobic blocks onto which more hydrophilic blocks are attached via bi-functional units, (b) at least one thickening agent that is a cross-linked or non-cross-linked homopolymer or copolymer based on acrylic acid or methacrylic acid or acrylic and methacrylic acid and (c) at least one co-thickening agent that is a non-cellulosic thickening polymer different from thickening agent (b). The fixing film-forming polymer that is a branched block copolymer consists essentially of n-butyl acrylate, acrylic acid, methacrylic acid, and allyl methacrylate and has at least two glass transition temperatures. See claim 26.

Applicant has further discovered a method for the styling and fixing of hair, that includes applying to the hair a cosmetic composition including a cosmetically acceptable carrier containing: (a) at least one fixing film-forming polymer that is a branched block copolymer consisting essentially of, as principal monomers, (1) at least one monomer selected from the group consisting of C_{1-20} alkyl acrylate, N-mono-(C_{2-12}) alkylacrylamide, N-mono-(C_{2-12}) alkylmethacrylamide, N,N-di-(C_{2-12}) alkylacrylamide and N,N-di-(C_{2-12}) alkylmethacrylamide, and (2) at least one monomer selected from the group consisting of acrylic acid, methacrylic acid, and acrylic and methacrylic acids, the polymer having a structure comprising hydrophobic blocks onto which more hydrophilic blocks are attached via bi-functional units, wherein the fixing film-forming polymer has at least two glass transition temperatures, (b) at least one thickening agent that is a homopolymer or copolymer based on acrylic acid or methacrylic acid

or acrylic and methacrylic acid that is cross-linked or non-cross-linked, and (c) at least one co-thickening agent that h is a non-cellulosic thickening polymer different from thickening agent (b), wherein the composition has a viscosity of about 1.9 Pa.s. See claim 39.

Applicant has discovered a branched block copolymer that has a block structure consisting essentially of a hydrophilic block and hydrophobic block. See paragraphs 3-4 on page 3 of the specification. Each block has a specific glass transition temperature. Id. Therefore, the presence of at least **two specific glass transition temperatures** reveals the block structure of the fixing-forming polymer. Id.

Midha describes "an improved method of making hydrophobic and hydrophilic graft polymers ...." See Abstract of Midha. As acknowledged by the Examiner, Midha does not "expressly teach the employment of the herein claimed branched block copolymer and the herein claimed thickeners in a cosmetic hair gel composition." See page 4 of the Office Action. Midha does not teach or suggest a cosmetic composition that includes a cosmetically acceptable carrier that includes at least one fixing film-forming polymer that is a branched block copolymer, at least one thickening agent and at least one co-thickening agent and wherein the fixing film-forming polymer has at least two glass transition temperatures. Midha further does not teach or suggest a method for the styling and fixing of hair, including applying to the hair a cosmetic composition that includes a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer, at least one thickening agent and at least one co-thickening agent, wherein the fixing film-forming polymer has at least two glass transition temperatures.

This defect is not remedied in Gebhard. Gebhard describes a "composition having wet state clarity includes an aqueous latex binder combination of polymer particles with a diameter of less than 80 nanometers and a thickener." See Abstract of Gebhard. According to column 3 lines 4-13 of Gebhard, the polymer particles have a glass transition temperature in the range of -40°C to 120°C. Therefore, the polymer particles disclosed in Gebhard have **a single glass transition temperature** instead of two glass transition temperatures.

Gebhard does not teach or suggest a cosmetic composition that includes a cosmetically acceptable carrier that includes at least one fixing film-forming polymer that is a branched block copolymer wherein the fixing film-forming polymer has at least two glass transition temperatures. Gebhard further does not teach or suggest a method for the styling and fixing of hair, including applying to the hair a cosmetic composition that includes a cosmetically

acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer, at least one thickening agent and at least one co-thickening agent, wherein the fixing film-forming polymer has at least two glass transition temperatures.

MPEP 2145, paragraph X. A, states that "[a]ny judgment on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill in that art at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper" (citing In re McLaughlin, 443 F.2d 1392, 1395 (CCPA 1971)). MPEP 2141 (II) lists basic considerations which apply to obviousness rejections to include the fact that "references must be considered as a whole and must suggest the desirability and the obviousness of making the combination."

There is **no motivation or suggestion** to combine the teachings of Midha and Gebhard. None of the above-cited references, alone or in combination, teach or suggest a cosmetic composition or a method for the styling and fixing of hair that includes a cosmetically acceptable carrier that includes at least one fixing film-forming polymer that is a branched block copolymer, wherein the fixing film-forming polymer has at least two glass transition temperatures.

Since claims 28-35 and 37-38 depend on claim 26, they are patentable over the combination of Midha and Gebhard for at least the reasons described above. Applicant respectfully requests reconsideration and withdrawal of this rejection.

Midha in view of Merck

The Examiner has rejected claims 41-44 under 35 U.S.C. § 103(a) as being unpatentable over Midha in view of Merck Index, 11th ed., 1989, monograph 4486 ("Merck"). Claims 42-44 depend from independent claim 41.

As previously discussed, Midha does not teach or suggest a cosmetic composition that includes a cosmetically acceptable carrier that includes at least one fixing film-forming polymer that is a branched block copolymer, at least one thickening agent and at least one co-thickening agent, wherein the fixing film-forming polymer has at least two glass transition temperatures.

Merck does not remedy this defect either. Merck describes guar gum and its use as a thickening agent. See page 720 of Merck. Merck does not teach or suggest a cosmetic composition that includes a cosmetically acceptable carrier that includes at least one fixing film-forming polymer that is a branched block copolymer, at least one thickening agent and at least

one co-thickening agent, wherein the fixing film-forming polymer has at least two glass transition temperatures.

Since claims 42-44 depend on claim 41, they are patentable over the combination of Midha and Merck for at least the reasons described above. Applicant respectfully requests reconsideration and withdrawal of this rejection.

Midha in view of Merck and Gebhard

The Examiner has rejected claims 45-48 under 35 U.S.C. § 103(a) as being unpatentable over Midha in view of Merck and Gebhard. Claims 46-48 depend from independent claim 45.

As previously discussed, Midha does not teach or suggest a method for the styling and fixing of hair, including applying to the hair a cosmetic composition that includes a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer, at least one thickening agent and at least one co-thickening agent, wherein the fixing film-forming polymer has at least two glass transition temperatures. As previously discussed, Merck and Gebhard do not remedy this defect either.

Since claims 46-48 depend on claim 45, they are patentable over combinations of Midha, Merck and Gebhard for at least the reasons described above. Applicant respectfully requests reconsideration and withdrawal of this rejection.

CONCLUSION

Applicant believes that the claims are in condition for allowance.

A petition for a three-month extension of time is also submitted herewith.

Should any fees be required by the present Reply, the Commissioner is hereby authorized to charge Deposit Account 19-4293.

Respectfully submitted,

Date: 9-28-06

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